

§ 134.317 Return of the case file.

Upon issuance of the decision, OHA will return the case file to the transmitting Area Office. The remainder of the record will be retained by OHA.

[67 FR 47250, July 18, 2002]

Subpart D—Rules of Practice for Appeals Under the 8(a) Program

SOURCE: 63 FR 35766, June 30, 1998, unless otherwise noted.

§ 134.401 Scope of the rules in this subpart D.

The rules of practice in this subpart D apply to all appeals to OHA from:

- (a) Denials of 8(a) BD program admission based solely on a negative finding(s) of social disadvantage, economic disadvantage, ownership or control pursuant to § 124.206 of this title;
- (b) Early graduation pursuant to §§ 124.302 and 124.304;
- (c) Termination pursuant to §§ 124.303 and 124.304;
- (d) Denials of requests to issue a waiver pursuant to § 124.515; and
- (e) Suspensions pursuant to § 124.305(a).

§ 134.402 Appeal petition.

In addition to the requirements of § 134.203, an appeal petition must state, with specific reference to the determination and the record supporting such determination, the reasons why the determination is alleged to be arbitrary, capricious or contrary to law. This section does not apply to suspension appeals. For suspensions, see § 124.305 of this chapter.

[63 FR 35766, June 30, 1998, as amended at 67 FR 47250, July 18, 2002]

§ 134.403 Service of appeal petition.

(a) Concurrent with its filing with OHA, a concern must also serve SBA's AA/8(a)BD and the appropriate Associate General Counsel in SBA's Office of General Counsel with a copy of the petition, including attachments.

(1) For appeals relating to denials of program admission pursuant to § 124.206 of this title, suspensions of program assistance pursuant to § 124.305, or denials of requests for waivers pursuant to

§ 124.515, a petitioner must serve the SBA's Associate General Counsel for Procurement Law.

(2) For appeals relating to early graduation pursuant to §§ 124.302 and 124.304 or termination pursuant to §§ 124.303 and 124.304, a petitioner must serve the SBA's Associate General Counsel for Litigation.

(b) Serve the AA/8(a)BD and the applicable Associate General Counsel at the Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

[63 FR 35766, June 30, 1998, as amended at 65 FR 57542, Sept. 25, 2000; 67 FR 47250, July 18, 2002]

§ 134.404 Decision by Administrative Law Judge.

Appeal proceedings brought under this subpart will be conducted by an Administrative Law Judge.

§ 134.405 Jurisdiction.

(a) The Administrative Law Judge selected to preside over an appeal shall decline to accept jurisdiction over any matter if:

(1) The appeal does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the determination, including appeals of denials of 8(a) BD program admission based in whole or in part on grounds other than a negative finding of social disadvantage, economic disadvantage, ownership or control;

(2) The appeal is untimely filed under § 134.202 or is not otherwise filed in accordance with the requirements of this subpart or the requirements in subparts A and B of this part; or

(3) The matter has been decided or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(b) Once the Administrative Law Judge accepts jurisdiction over an appeal, subsequent initiation of an adjudication of the matter by a court of competent jurisdiction will not preclude the Administrative Law Judge from rendering a final decision on the matter.

(c) Jurisdiction of the Administrative Law Judge in a suspension case is limited to the issue of whether the protection of the Government's interest requires suspension pending resolution of